

HOUSE BILL 1734
By Lynn

AN ACT to amend Tennessee Code Annotated, Title 2,
Chapter 10; Title 2, Chapter 19 and Title 8,
Chapter 50, relative to restrictions on certain
activities of members of the general assembly.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 50, is amended by adding
Sections 2 through 4 of this act as a new part.

SECTION 2.

(a) No legislator shall professionally represent any person or entity in any legal action against the state where the state is the real party in interest, nor receive compensation or any other benefit for acting as an informal representative, advisor or consultant to persons or entities regarding their actions against the state. This provision shall not be construed to prevent a legislator or legislative employee who is an attorney from representing a criminal defendant or client in competency, commitment, delinquency, support, child abuse and neglect, or similar proceedings where the state is not the real party in interest.

(b) No legislator shall professionally represent, either formally or informally, as an advocate, advisor or consultant, any person or entity in an action before an agency, board or commission of the state unless the proceeding is adjudicatory in nature and there is no reasonable basis to conclude that the side represented by the legislator has an unfair advantage. A matter will be considered to be adjudicatory in nature where opposing sides are separately represented.

(1) This provision shall not prohibit an attorney from representing a client in any otherwise permissible action before a criminal or civil court nor to prevent

a legislator from representing personal interests in an otherwise proper proceeding.

(2) This provision shall be construed to prohibit formal and informal professional representation for purposes of obtaining or retaining a state license, permit, franchise, grant, loan or other entitlement, whether or not other parties contending for the state benefit are represented. If, however, the granting of the benefit is a purely ministerial matter requiring little or no discretion, this provision shall not prohibit representation.

(c) Notwithstanding any other law to the contrary, no legislator acting as an attorney or representative of another, shall seek or accept any special treatment, privileges, rights or concessions solely by reason of service in the legislature. This shall include the seeking and granting of legislative stays.

(d) This provision shall not be construed to prohibit a legislator from informally advising a constituent about the procedure or appropriateness of bringing an action against the state. If a legislator in an otherwise proper manner advises a constituent or another in an action against the state or before a state agency, the legislator shall not reveal any nonpublic or confidential information.

(e) If an attorney is disqualified under this provision in accordance with the attorney's code of professional responsibility, the firm of the legislator shall also be disqualified.

(f) In extraordinary situations where the criteria for an exemption exists, a legislator may seek a waiver of this section.

(g) Because this provision may require substantial adjustments in the way a legislator earns non-legislative income, those who find it unreasonably difficult to comply with the restrictions for any reason may, until January 1, 2006, represent persons in any

proceeding provided that if the representation is one that would be prohibited under this section:

(1) A statement is filed with the registry of election finance or secretary of state and published in the journal of the appropriate house, including the name of the client, an identifying name or number of the action, a brief description of the nature of the action, and the amount of compensation received or anticipated relating to the representation; and

(2) Any changes in any of the above, including any additional compensation paid or anticipated, is filed every ninety (90) days until the matter is completed or January 1, 2006, at which point the representation shall be terminated.

(h) Knowingly false, deliberately misleading, incomplete or unnecessarily delayed disclosure to the registry of election finance or secretary of state, as well as any other violation of this section, will subject the violator to all civil remedies authorized under section 4.

SECTION 3.

(a) No legislator shall be a party to, or have a financial interest in, a state contract or lease except as provided below:

(1) The contract is let through competitive sealed bidding under title 12, chapter 4, and the legislator has filed a statement with the registry of election finance or secretary of state at the time the bid is made certifying under penalty of perjury that the legislator or legislative assistant had no:

(A) access to inside, nonpublic or confidential information that reasonably could appear to provide an advantage; and

(B) Discussions or contracts with state officials involved in letting the contract about the contract that could unduly influence the decision.

The statement shall also specify the nature of the legislator's personal or immediate family interest, including the percentage or share of profits that will be realized.

The registry of election finance or secretary of state may request additional information which must be promptly provided. If the registry of election finance or secretary of state believes the nature or circumstances of the contract raise impermissible conflicts of interest, it may void the contract or order restrictions. The statement filed by the legislator regarding the contract shall be made part of the public record and published in the journal of the appropriate house;

(2) The total amount of the contract or lease over the course of a year is less than one thousand dollars (\$1,000) and it was let under circumstances that raise no substantial question as to the use of undue influence; or

(3) The contract or lease was developed and standardized under published guidelines and the benefits and rights conferred are widely available to the general public under the same terms and conditions.

(b) No legislator shall seek or accept any compensation, whether in the form of a commission, bonus, retainer, kickback or other form on any state contract, nor shall any legislator receive any similar compensation for services relating to recommending, supporting or advocating a contract between any person or business with any entity of state government, any entity of local government which receives substantial state subsidy or any private enterprise which does a substantial portion of its business with state government.

(c) No legislator shall seek or accept any contract for goods or personal services or any other compensation concerning a matter on which the legislator or legislative assistant worked extensively within the last year of service with the general assembly.

(d) A legislator may properly participate in statewide benefits programs or receive a loan from the state provided that the program or loan is generally available to members of the public, is subject to fixed objective eligibility standards and requires minimal discretion in determining qualifications.

(1) The registry of election finance or secretary of state shall review annually state programs and state loans and publish a list of programs and loans, designating which ones meet the qualifications stated.

(2) All persons participating in programs or receiving loans which do not qualify under this section shall file a written report with the registry of election finance or secretary of state by the first Monday in February of each year stating the amounts of the loans and any other benefits received as of January 15 of that year from non-qualifying programs. The registry of election finance or secretary of state shall promptly compile a list of such statements indicating the programs and amount and send it to the presiding officer of each house, who shall have it published in the journal within three (3) weeks of the filing date. If the registry of election finance or secretary of state requests more information, it shall be promptly provided.

(3) If loan proceeds or other program benefits are received from non-qualifying programs or loans after January 15, the legislator shall file a statement with the registry of election finance or secretary of state within thirty (30) days after the beginning of participation in the state program or receipt of proceeds

from the state loan. This statement shall be promptly forwarded to the presiding officer of the appropriate house, who shall cause it to be published in the journal.

(4) If the registry of election finance or secretary of state determines that the nature and circumstances under which the legislator received a state benefit or loan raises an undue appearance of impropriety or was in fact the result of unfair or improper influence, it shall be treated as a violation of this part and the registry of election finance or secretary of state may order whatever authorized remedies as are suitable.

(e) In extraordinary situations where the criteria for an exemption exist, a legislator may seek a waiver of this section.

(f) Knowingly false, deliberately misleading or incomplete or unnecessarily delayed disclosure to the registry of election finance or secretary of state, as well as any other violation of this section, will subject the violator to all civil remedies authorized under section 4.

SECTION 4.

(a) The legislative ethics committee of the appropriate house may order appropriate sanctions designed to fit the offense and assure both fair treatment of the offender and deterrence to others who might consider similar acts.

(b) The sanctions available include, but are not limited to:

(1) Civil penalties of not more than five thousand dollars (\$5,000) for each offense, or equal to twice the amount improperly gained by the misconduct, whichever is greater;

(2) Divestiture of specified assets or withdrawal from specified relationships;

(3) Detailed disclosure, with or without additional periodic reporting requirements;

(4) Restitution or reimbursement;

(5) Suspension of pay until orders are complied with;

(6) Forfeiture of pension benefits;

(7) Written reprimand;

(8) Voiding any legislation or other action resulting from conduct in violation of this part;

(9) Censure (A) legislator censured shall not serve as a chair or co-chair on any legislative committee for the remainder of the legislator's pending term in office;

(10) Expulsion of a legislator;

(11) Payment of costs related to the investigation and adjudication of the charge; and

(12) Any other sanction fashioned to achieve the purposes of this part.

Each of the above penalties may be ordered separately or in combination.

(c) Each of the provisions also gives rise to a separate civil action which may be brought by the attorney general or, upon failure of the attorney general to bring an action within sixty (60) days of a written request to do so, by any citizen.

(1) The right to proceed in a separate civil suit is independent of any proceeding conducted by the legislative ethics committee, but to the extent that a civil fine is ordered for any offense, no person shall be fined more than five thousand dollars (\$5,000) for each offense, or twice the amount of the benefit received from the conduct providing the basis of the charge, whichever is greater.

(2) If it does not jeopardize an action before the legislative ethics committee, cause unfair prejudice to the person charged or violate a legal obligation of confidentiality, information acquired by the committee shall be made available, on request, to litigants in the civil action.

(d)

(1) Any conduct which is criminal under the specific provisions of this part or any other state law may be separately prosecuted without regard to the resolution or pendency of a charge before the legislative ethics committee or a civil court.

(2) If it does not jeopardize an action before the legislative ethics committee, cause unfair prejudice to the person charged or violate a legal obligation of confidentiality, information acquired by the committee shall be made available, on request, to the defendant and prosecutor in the criminal action.

SECTION 5. This act shall take effect July 1, 2005, the public welfare requiring it.